SINGLE BENCH

(4)

CP 3001

IN THE HIGH COURT OF CHHATTISGARH
~~AT BILASPUR~~

W.P. No. 4193 /2006

Petitioner :

1. PADMAN LAL CHAUDHARY,
S/o Shri Tularam Chaudhary,
aged about 38 years,
R/o village Tilanjanpur,
Block - Pithora,
District Mahasamund (C.G.)

2. BHOJ RAJ PRADHAN,
S/o Shri Kamdar Pradhan,
aged about 38 years,
R/o village Mohgaon,
Block - Pithora,
District Mahasamund (C.G.)

3. NEERA LAL NAYAK,
S/o Shri Dileshwar Nayak,
aged about 39 years,
R/o village Raja Sevaiya,
Block - Pithora,
District Mahasamund (C.G.)

P.R. No. 4263/06
Presented by Shri R.S. Baghel
dated 11/8/06

ALLOWED COPY
4/8/06
Advocate C.G. BILASPUR

VERSUS

Respondents :

1. State of Chhattisgarh
Through Secretary,
Panchayat & Social Welfair
Department, D.K.S. Bhawan,
Raipur, Distt. Raipur (C.G.)

2. Collector,
Distt. Mahasamund (C.G.)

OATH COMMISSIONER
APARNA MALVIYA
CG-2073/96
04/08/06
Bilaspur Chhattisgarh

3. Director,
Panchayat & Social Welfare
Directorate, Raipur (C.G.)

4. Chief Executive Oficer
Zila Panchayat,
Mahasamund (C.G.)

WRIT PETITION UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT(S), IN THE NATURE OF MANDAMUS, CERTIORARY OR DIRECTION(S).

(10) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) No. 4193 of 2006.

Petitioners : Padman Lal Chaudhary & Others

Versus

Respondents : State of Chhattisgarh & Others

Post for order on 14th March, 2007

Sd/-
Satish K. Agnihotri
Judge

(41)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S) No. 4193 of 2006.

Petitioners : Padman Lal Chaudhary & Others

Versus

Respondents : State of Chhattisgarh & Others

Present: Shri R.S.Baghel, Advocate for the petitioners.
Shri Satish Gupta, Deputy Government Advocate for the State/respondents.

ORDER
(Passed on 14 .03.2007)

1. By this petition, the petitioners seek a writ in the nature of mandamus against the respondents to promote them to the post of Shiksha Karmi Grade II in Jila Panchayat Mahasamund granting them preference over other candidates, as the petitioners have graduation degree and Bachelor in Education certificate. Alternatively, the respondents 1 to 4 be directed to place them above other Shiksha Karmi Grade III who do not possess bachelor degree and bachelor degree in Education or B.T.I.

2. The facts in nutshell are that the petitioner 1 was appointed as Shiksha Karmi Grade III on 7.12.1998 by the Janpad Panchayat Pithora and joined the services on 8.12.198. The petitioner no. 2 was

appointed as Shiksha Karmi Grade III on 18.5.99 and joined on 1.7.99 by the same Janpad Panchayat Pithora, and the petitioner no. 3 was appointed as Shiksha Karmi Grade III on 30.09.98 and joined on 9.10.98 by the same Janpad Panchayat and posted at Vimalpur. According to the petitioners, they are graduate in arts and have obtained bachelors degree in Education before their appointment as Shiksha Karmi Grade III. According to the Schedule IV of the Chhattisgarh Shiksha Karmis (Recruitment and Conditions of Services) Rules, 1997 (for short "Rules, 1997"), the required qualification for promotion from Shiksha Karmi Grade III to Shiksha Karmi Grade II is graduate degree and experience of not less than 7 years in the post held. The qualification for appointment as Shiksha Karmi Grade III as incorporated vide notification no. 2 dated 31.7.98 in the Rules, 1997 is as under:

" 3-A. Grade III

S.No.	Shiksha Karmi Grade	Minimum Age	Maximum age	Educational Qualification
(1)	(2)	(3)	(4)	(5)
(a)	Shiksha Karmi Tabla	21	33	Certificate from recognised institution in Tabla.
(b)	Shiksha Karmi Vigyan/ Shiksha Karmi Prayogshala	21	33	Higher Secondary Certificate Examination (Science Group)
(c)	Shiksha Karmi Urdu	21	33	Higher Secondary School Certificate Examination with Urdu Subject."

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3. The petitioners applied for promotion to the post of Shiksha Karmi Grade II which could not be granted to these petitioners. Thus this petition.

4. Shri R.S.Bhagat, learned counsel appearing for the petitioners would submit that the petitioners are having better qualification i.e. degree in graduation and degree in Bachelor of Education, have to be given seniority over other teachers. It was further contended that all the Shiksha Karmis, who are having graduation degree be treated as one class and the remaining be treated as different class. Learned counsel further contended that the seniority on the basis of the date of joining not on the basis of pre-appointment educational qualification is violative of Article 14 and 16 of the Constitution of India. Since the petitioners were given extra points at the time of recruitment, they should be treated senior to other lesser qualified Shiksha Karmi Grade III. The petitioners have a legitimate expectation of being granted preference for promotion on the basis of better qualification possessed by them.

5. Per contra, Shri Satish Gupta, Deputy Government Advocate appearing for the respondents/State would submit that the petition deserves to be dismissed on the ground of non-joinder of parties as the petitioners were appointed by the C.E.O. Janpad Panchayat Pithora, District Mahasamund. The C.E.O. Janpad Panchayat Pithora, being the appointing authority is a necessary party to the petition for proper adjudication of the dispute. On merit, the learned

counsel submits that the petitioners have been granted weightage at the time of recruitment on the post of Shiksha Karmi Grade III and there is no provision under law that after recruitment, any seniority should be assigned on the basis of qualification but not on the basis of date of appointment. He further urged that the contentions of the petitioners are frivolous and unsustainable.

6. It was further submitted that the seniority of Shiksha Karmi is maintained at the Janpad Panchayat level and the promotions from Shiksha Karmi Grade III to Grade II is made by the Janpad Panchayat. The concerned Janpad Panchayat is not made a party and as such, it was difficult to know as to how the promotions were made.

7. I have heard the learned counsel appearing for the parties and have perused the pleadings and documents appended thereto. The contention of the petitioners on all counts deserves to be rejected. The contention of the petitioner is based on conjectures and guesswork. Rule 5 of Rules, 1997 dealing with the methods of selection and recruitment does not provide for grant of any seniority to these persons who have graduation in arts-science or graduation in Education except some percent of weightage was given to them at the time of recruitment. Rule 5(9) of Madhya Pradesh Panchayat Shiksha Karmi (Recruitment And Conditions of Service) Rules, 1997 reads as under:

"(9) (i) The Committee will assess the candidates called for interview and award marks in the following manner:

(a) 70% marks for marks obtained in the qualifying examination specified in Schedule II, while giving weightage for the prescribed qualifying examination, weightage to candidates of vocational courses will be given only on the basis of marks obtained in the theory examination.

(b) 10% marks of the teaching experience (3%, 6% and 10% marks shall be for the experience of one year, two years and three years and more respectively in which minimum eight months educational session shall be counted as one year experience and shall include teaching experience in Education Guarantee Scheme Centres, D.P.E.P. alternate schools and Non-Formal Education Centres), in the schools of concerning Janpad Panchayat or Zila Panchayat. Similar benefits will be given for teaching experience of hundred percent State Government aided and recognised rural schools. The decision of the General Administration Committee on the validity and valuation of the certificate of teaching experience of rural school shall be final.)

(c) (7%) marks for oral test which may include the test for:-

(i) Communication skills in local dialect.

(ii) Knowledge of local environment.

(iii) General knowledge.

(iv) Training and Teaching Aptitude.

(v) Any other test which the Selection Committee may deem fit.

(d) 8% marks for B.Ed/B.T.I.D.Ed. Certificate, 2.5% marks for Scouts and Guides/N.C.C. Certificates and 2.5% marks for sports (for participating in inter district or higher level events.)]

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(e) All other things remaining the same, in the final selection, those who have teaching experience of schools of Janpad Panchayat or Zila Panchayat will be given preference.

[(ii) Select List of each category shall be prepared on the basis of the above assessment in order of merit and shall include 5 names or 20% names, whichever is more in waiting list which shall be valid for nine months. For appointment there shall be prepared an integrated select list equivalent to the number of vacant posts in such order that the name of the candidates securing maximum marks shall be on the top of the list followed by other names in descending order up to the number of vacancies first in General Category (Unreserved Category). If in the list of General Categories there is a reserve category candidate on the merit basis, his appointment shall not be treated against the post of reserved category. After this the names of reserved category candidates shall be written in descending order equivalent to the number of total vacancies in each of such categories. In addition to the integrated select list 5 names or 20% names of the candidates whichever is more, shall be kept in the waiting list on the said principle]."

8. The basic qualification for recruitment on the post of Shiksha Karmi Grade III is Higher Secondary Certificate Examination or equivalent to that. The promotion from Shiksha Karmi Grade III to Grade II is provided in Schedule IV of the Rules, 1997 that the qualification prescribed is graduate degree and experience of not less than 7 years in the post held. Whether the petitioners had completed 7 years when the application for consideration for promotion to the post of Shiksha Karmi Grade II was invited, is not known.

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9. The Jannpad Panchayat Pithora is a necessary party and the Janpad Panchayat Pithora is in position to explain as to how the recruitment was made, what is the position of seniority and where the petitioners stand in seniority as the same is maintained by the Janpad Panchayat. The petitioners have deliberately, it appears, not impleaded the necessary and relevant Janpad Panchayat Pithora and other teachers who have been promoted as party-respondents in this petition. On the question of non-joinder of party, the Hon'ble Supreme Court in **Arun Tewari & Others Vs. Zila Mansavi Shikshak Sangh & Others**[1], observed as under:

> "13. All the original applicants before the Tribunal who have challenged these provisions for recruitment of Assistant Teachers under the Operation Blackboard Scheme did not possess the requisite qualification for being selected under the said scheme as Assistant Teachers. Their names do not figure among the lists forwarded by the District Employment Exchanges concerned. Surprisingly, the applications filed by all these persons and/or groups before the Tribunal did not make the selected/appointed candidates who were directly affected by the outcome of their applications, as party respondents. The Tribunal has passed the impugned order without making them parties or issuing notices to any of them. The entire exercise is seriously distorted because of this omission."

10. The Supreme Court, in the matter of **Prabodh Verma Vs. State of U.P. 1984(4) SCC 251**[2] while dealing with the question of constitutional validity of Uttar Pradesh High School and

intermediate college (Reserve Pool Teachers) Ordinance 1978 and Uttar Pradesh held in para 50 as under:

> "50. To summarise our conclusions:
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> (1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the person who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

11. In the present case, the petitioners have neither impleaded the affected persons who have been promoted, nor the Janpad Panchayat which has recruited and prepared seniority list of Shiksha Karmi Grade III. Thus, in absence of necessary party, this petition deserves to be dismissed. Even otherwise, in view of the analysis made hereinabove looking from all angles, the petition is devoid of merit.

12. The petition is dismissed accordingly. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. (1998) 2 SCC 332
2. (1984) 4 SCC 251

Amit